

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2420

SPONSOR: Children and Families Committee and Senator Diaz-Balart

SUBJECT: Confidentiality of Records

DATE: April 14, 2000                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

CS/SB 2420 provides legislative findings as to the public necessity for this public records exemption. The Legislature finds that the personal information (home address, telephone number, social security number, and photograph) should be exempt from disclosure for employees of the Department of Children and Family Services who provide services to abused, neglected, abandoned, or exploited children; disabled adults and elderly persons and their families; and families of employees currently exempt from public records disclosure whose duties include the investigation of abuse, neglect, abandonment, or exploitation. This disclosure is necessary because individuals dealing with these employees might be upset, angry, or violent. This exemption is necessary to protect the health, safety, and welfare of the employees and their families. Also, if such personal information is not protected, the department may be unable to obtain qualified employees due to safety concerns which could impede the effective and efficient administration of the department.

The bill states that the Department of Children and Family Services may petition the court for an order for the immediate public release of records which pertain to the death of a child, a disabled adult, or an elderly person when the death has not yet been determined to be the result of abuse, abandonment, or neglect. If the court neither grants nor denies the request within 24 hours, the department would then be able to release to the public summary information about the investigation, procedural activities about the department's investigation, and the dates and summaries of the judicial proceedings and ruling of the court.

This bill substantially amends sections 119.07, of the Florida Statutes.

## II. Present Situation:

### Release of Public Records

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by the Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created under their jurisdiction; counties, municipalities, and districts; and each constitutional officer, board, commission, or entity created pursuant to law or the Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24, Florida Constitution. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in s. 119.07, F.S., which provides that every person who has custody of a public record must permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption to the public records requirements may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Under s. 119.15(3), F.S., the Open Government Sunset Review Act of 1995, a new exemption or a substantial amendment of an existing exemption must be repealed on October 2nd of the fifth year of enactment, unless reviewed and reenacted by the Legislature. Any law taking effect after 1995, that enacts a new exemption or substantially amends an existing exemption must state within the law that the exemption is subject to repeal in 5 years and that the law must be reviewed by the Legislature prior to this date.

Under s. 119.07(7)(b), F.S., the Department of Children and Family Services (department) may petition the court for the immediate public release of records held by the department pertaining to the investigation of abuse, neglect, abandonment, or exploitation of a child, disabled adult, or elderly person, in the event of serious bodily injury to that child, disabled adult, or elderly person. The petition must be personally served upon the child, the disabled adult, or elderly person.

Section 39.202(2)(o), F.S., allows the release of departmental records (except the name of the reporter) to any person when a child dies as a result of abuse, abandonment, or neglect. Section 415.107(2)(l), F.S., allows the release of departmental records concerning reports of abuse, neglect, or exploitation of a disabled adult or elderly person, when it has been determined that the death of the disabled adult or elderly person was a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect, or exploitation may not be released.

The department reports that it can take as long as a year for the determination to be final that the death was due to abuse, neglect, abandonment, or exploitation.

### **Protecting Personal Information About Employees and Families**

Currently, s. 119.07(3)(I)(1.), F.S., provides that the home addresses, telephone numbers, social security numbers, and photographs of certain classes of professionals be held confidential and exempt from public disclosure. Those professionals listed include: active or former law enforcement officers, including correctional and correctional probation officers; personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect; and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement of child support orders. The exemption from disclosure also includes the home addresses, telephone numbers, social security numbers, photographs, and places of employment of spouses and children of such professionals and the names and locations of schools and day care facilities attended by the children of such professionals.

The department reports many situations throughout the state where child protection professionals or their family members have been stalked, harassed, or threatened by persons who are disgruntled because of the professional's involvement in providing investigative or other services to abused, neglected, abandoned or exploited children, disabled adults, or elderly persons.

### **III. Effect of Proposed Changes:**

CS/SB 2420 amends s. 119.07(3)(I), F.S., by prohibiting the release of the home address, telephone number, social security number, and photograph of all personnel of the department

whose duties include the provision of services to abused, neglected, abandoned or exploited children, disabled adults, elderly persons, and their family members. The bill also prohibits the release of this information for family members of department employees currently specified in law whose duties include the investigation of abuse, neglect, or abandonment, or exploitation.

The bill amends s. 119.07(7)(b), F.S., by specifying that the department may petition for a court order for the immediate public release of records which pertain to the death of a child, a disabled adult, or an elderly person, including those cases when the death has not been determined to be the result of abuse, abandonment, or neglect.

The bill provides legislative findings as to the public necessity for this public records exemption. The Legislature finds that the personal information of the employees of the department who provide services to abused, neglected, abandoned, or exploited children, disabled adults and elderly persons and their families should be exempt from disclosure because of the circumstances surrounding the involvement of the department and the fact that individuals dealing with the department might be upset, angry, or violent. The Legislature finds that this exemption is necessary to protect the health, safety, and welfare of the employees and their families. The bill states that if this personal information is not protected, the department may be unable to obtain qualified employees due to safety concerns which could impede the effective and efficient administration of the department's programs.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

CS/SB 2420 amends s. 119.07(3)(I)1., F.S., by prohibiting the release of identifying information about employees of the Department of Children and Family Services whose duties include the provision of services to abused, neglected, abandoned or exploited children, disabled adults and elderly persons and their families and identifying information about the families of departmental employees who are currently exempt from public records disclosure whose duties include the investigation of abuse, neglect, abandonment, or exploitation.

The bill authorizes the department to petition the court in cases involving the death of a child, a disabled adult, or an elderly person including those cases when it has not been determined that the death was a result of the abuse, abandonment, or neglect, for the immediate release of departmental records which pertain to the investigation of abuse, neglect, abandonment, or exploitation of the child, disabled adult, or elderly person who died.

##### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

CS/SB 2420 may have a minimal fiscal impact on the courts because there could be an increase in the number of court petitions filed by the department for immediate public release of investigative records.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.